

### Part 3 Enforcement of Instruments

#### **70A-3-301 Person entitled to enforce instrument.**

"Person entitled to enforce" an instrument means the holder of the instrument, a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 70A-3-309 or Subsection 70A-3-418(4). A person may be a person entitled to enforce the instrument even though he is not the owner of the instrument or is in wrongful possession of the instrument.

Repealed and Re-enacted by Chapter 237, 1993 General Session

#### **70A-3-302 Holder in due course.**

- (1) Subject to Subsection (3) and Subsection 70A-3-106(4), "holder in due course" means the holder of an instrument if:
  - (a) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and
  - (b) the holder took the instrument for value, in good faith, without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, without notice that the instrument contains an unauthorized signature or has been altered, without notice of any claim to the instrument described in Section 70A-3-306, and without notice that any party has a defense or claim in recoupment described in Subsection 70A-3-305(1).
- (2) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under Subsection (1), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.
- (3) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:
  - (a) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding;
  - (b) by purchase as part of a bulk transaction not in ordinary course of business of the transferor; or
  - (c) as the successor in interest to an estate or other organization.
- (4) If, under Subsection 70A-3-303(1)(a), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.
- (5) If the person entitled to enforce an instrument has only a security interest in the instrument, and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.
- (6) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

- (7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-303 Value and consideration.**

- (1) An instrument is issued or transferred for value if:
- (a) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;
  - (b) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;
  - (c) the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;
  - (d) the instrument is issued or transferred in exchange for a negotiable instrument; or
  - (e) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.
- (2) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in Subsection (1), the instrument is also issued for consideration.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-304 Overdue instrument.**

- (1) An instrument payable on demand becomes overdue at the earliest of the following times:
- (a) on the day after the day demand for payment is duly made;
  - (b) if the instrument is a check, 90 days after its date; or
  - (c) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.
- (2) With respect to an instrument payable at a definite time the following rules apply:
- (a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.
  - (b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.
  - (c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.
- (3) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-305 Defenses and claims in recoupment.**

- (1) Except as stated in Subsection (2), the right to enforce the obligation of a party to pay an instrument is subject to the following:
- (a) a defense of the obligor based on:

- (i) infancy of the obligor to the extent it is a defense to a simple contract;
- (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor;
- (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or
- (iv) discharge of the obligor in insolvency proceedings;
- (b) a defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and
- (c)
  - (i) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument;
  - (ii) but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.
- (2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in Subsection (1)(a), but is not subject to defenses of the obligor stated in Subsection (1)(b) or claims in recoupment stated in Subsection (1)(c) against a person other than the holder.
- (3) Except as stated in Subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument under Section 70A-3-306, of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.
- (4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under Subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-306 Claims to an instrument.**

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-307 Notice of breach of fiduciary duty.**

- (1) In this section:
  - (a) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.
  - (b) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in Subsection (1)(a) is owed.

- (2) If an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:
- (a) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.
  - (b) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is:
    - (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;
    - (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or
    - (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.
  - (c) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.
  - (d) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:
    - (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;
    - (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or
    - (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

Amended by Chapter 324, 2010 General Session

**70A-3-308 Proof of signatures and status as holder in due course.**

- (1) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Subsection 70A-3-402(1).
- (2) If the validity of signatures is admitted or proved and there is compliance with Subsection (1), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 70A-3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that he has rights of a holder in due course which are not subject to the defense or claim.

Enacted by Chapter 237, 1993 General Session

**70A-3-309 Enforcement of lost, destroyed, or stolen instrument.**

- (1) A person not in possession of an instrument is entitled to enforce the instrument if:

- (a) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred;
  - (b) the loss of possession was not the result of a transfer by the person or a lawful seizure; and
  - (c) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
- (2) A person seeking enforcement of an instrument under Subsection (1) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 70A-3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Enacted by Chapter 237, 1993 General Session

**70A-3-310 Effect of instrument on obligation for which taken.**

- (1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.
- (2) Unless otherwise agreed and except as provided in Subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:
- (a) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.
  - (b) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.
  - (c) Except as provided in Subsection (2)(d), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.
  - (d) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.
- (3) If an instrument other than one described in Subsection (1) or (2) is taken for an obligation, the effect is that stated in Subsection (1) if the instrument is one on which a bank is liable as maker or acceptor, or that stated in Subsection (2) in any other case.

Amended by Chapter 324, 2010 General Session

**70A-3-311 Accord and satisfaction by use of instrument.**

- (1) If a person against whom a claim is asserted proves that that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, the amount of the claim was unliquidated or subject to a bona fide dispute, and the claimant obtained payment of the instrument, the following subsections apply.
- (2) Unless Subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.
- (3) Subject to Subsection (4), a claim is not discharged under Subsection (2) if either of the following applies:
  - (a) The claimant, if an organization, proves that:
    - (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted, which states that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place; and
    - (ii) the instrument or accompanying communication was not received by that designated person, office, or place.
  - (b) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This Subsection (3)(b) does not apply if the claimant is an organization that sent a statement complying with Subsection (3)(a)(i).
- (4) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.
- (5) Merely writing a statement on a check which declares that a child support obligation is paid in full is not sufficient to bind the recipient who endorses the check. Child support obligations are considered owing unless paid in full or otherwise ordered by a tribunal.

Amended by Chapter 176, 2003 General Session

**70A-3-312 Lost, destroyed, or stolen cashier's check, teller's check, or certified check.**

- (1) In this section:
  - (a) "Check" means a cashier's check, teller's check, or certified check.
  - (b) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.
  - (c) "Declaration of loss" means a written statement, bearing a notification to the effect that false statements made in the written statement are punishable by law, to the effect that:
    - (i) the declarer lost possession of a check;
    - (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check;
    - (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure;and

- (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
  - (d) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.
- (2)
- (a) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if:
    - (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check;
    - (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check;
    - (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and
    - (iv) the claimant provides reasonable identification if requested by the obligated bank.
  - (b)
    - (i) Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration.
    - (ii) If a claim is asserted in compliance with this Subsection (2), the claim becomes enforceable at the later of:
      - (A) the time the claim is asserted; or
      - (B) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.
  - (c) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.
  - (d) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.
  - (e) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to Subsection 70A-4-302(1)(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.
- (3) If the obligated bank pays the amount of a check to a claimant under Subsection (2)(e) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to:
- (a) refund the payment to the obligated bank if the check is paid; or
  - (b) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.
- (4) If a claimant has the right to assert a claim under Subsection (2) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or Section 70A-3-309.
- (5) This section does not apply to checks that have become the property of the state pursuant to Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.

Amended by Chapter 306, 2007 General Session